

MONTANA LEGISLATIVE HISTORY

Chapter 246 19 81

Bill H _____ S 407

Original bill & history X C

H. Committee on State ADMN

Hearing Date(s) 3/12 X C

& EXEC ACTION

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on JUDICIARY

Hearing Date(s) 2/14 X C

& EXEC ACTION

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

111
107

SENATE BILL NO. 407

INTRODUCED BY S. BROWN, HINSL

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE SENATE

February 9, 1981	Introduced and referred to Committee on Judiciary.
February 14, 1981	Committee recommend bill do pass. Report adopted.
February 16, 1981	Statement of intent attached. Bill printed and placed on members' desks.
February 18, 1981	Second reading, do pass.
February 19, 1981	Correctly engrossed.
February 20, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

February 21, 1981	Introduced and referred to Committee on State Administration.
March 12, 1981	Committee recommend bill be concurred in. Report adopted.
March 14, 1981	Motion pass consideration.
March 21, 1981	Second reading, concurred in.
March 24, 1981	Third reading, concurred in. Ayes, 91; Noes, 7.

IN THE SENATE

March 25, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Senate* BILL NO. *407*
2 INTRODUCED BY *STEVE BROWN Animal*
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SPECIFY THE
6 DISCIPLINARY AUTHORITY OF LICENSING BOARDS IN THE DEPARTMENT
7 OF PROFESSIONAL AND OCCUPATIONAL LICENSING."
8

9 WHEREAS, during its sunset review of licensing boards,
10 the Legislative Audit Committee noted that disciplinary
11 authority of some boards over licensees is not specified in
12 the law and that consequently some boards are hesitant to
13 take disciplinary action against licensees.

14 THEREFORE, it is the intent of this act to specify the
15 disciplinary authority of the boards allocated to the
16 Department of Professional and Occupational Licensing.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Disciplinary authority of boards --
20 injunctions. (1) Each licensing board allocated to the
21 department has the authority, in addition to any other
22 penalty or disciplinary action provided by law, to adopt
23 rules specifying grounds for disciplinary action and rules
24 providing for:

25 (a) revocation of a license;

1 (b) suspension of its judgment of revocation on terms
2 and conditions determined by the board;
3 (c) suspension of the right to practice for a period
4 not exceeding 1 year;
5 (d) placing a licensee on probation;
6 (e) reprimand or censure of a licensee; or
7 (f) taking any other action in relation to
8 disciplining a licensee as the board in its discretion
9 considers proper.

10 (2) Any disciplinary action by a board shall be
11 conducted as a contested case hearing under the provisions
12 of the Montana Administrative Procedure Act.

13 (3) Notwithstanding any other provision of law, a
14 board may maintain an action to enjoin a person from
15 engaging in the practice of the occupation or profession
16 regulated by the board until a license to practice is
17 procured. A person who has been enjoined and who violates
18 the injunction is punishable for contempt of court.

19 Section 2. Codification instructions. Section 1 is
20 intended to be codified as an integral part of Title 27,
21 chapter 1, part 1.

-End-

-2- INTRODUCED BILL
88 407

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>SENATE</u> <u>BILL NO.</u>	<u>ENTERED</u> <u>COMM.</u>	<u>DATE</u> <u>CONSIDERED</u>	<u>OUT OF</u> <u>COMM.</u>	<u>DO PASS</u> <u>DATE</u>	<u>DO NOT</u> <u>PASS</u> <u>DATE</u>	<u>DO PASS</u> <u>AS AMEND.</u> <u>DATE</u>	<u>BE CON-</u> <u>CURRED IN</u> <u>DATE</u>	<u>BE CONC. IN</u> <u>AS AMENDED</u> <u>DATE</u>	<u>BE NOT CON-</u> <u>CURRED IN</u> <u>DATE</u>
SB 403	2/09/81	2/14/81	2/14/81	2/14/81					
SB 404	2/09/81	2/14/81	2/14/81	2/14/81					
SB 407	2/09/81	2/14/81	2/14/81	2/14/81					
SB 411	2/10/81	2/14/81	2/14/81	2/14/81					
SB 420	2/23/81	hold to kill							
SB 421	2/23/81	hold to kill							
SB 438	2/23/81	hold to kill							
SB 468	2/14/81	2/18/81	2/19/81	2/19/81					
SB 475	2/14/81	2/18/81	2/19/81			2/19/81			
SB 477	2/14/81	2/18/81	2/19/81		2/19/81				
SB 478	2/14/81	2/18/81	2/18/81		2/18/81				
SB 479	2/14/81	2/18/81	2/18/81	2/18/81					
SB 485	3/23/81	3/25/81	3/25/81			3/25/81			
SB 486	3/23/81	3/25/81	3/25/81	tabled					

A separate sheet for Senate, House Bills, and Resolutions.

allow authorities from another state to conduct interviews prior to release of prisoners to Montana. He pointed out that this would avoid unnecessary expense to Montana of sending a state official to conduct the interview.

Hank Bridges, Chairman of the State Parole Board supported the bill because of the convenience and because of the money which would be saved.

CONSIDERATION OF SENATE BILL 341:

PROVIDING FOR TRIAL IN ANY COUNTY WHERE
AN OFFENSE THAT IS PART OF A COMMON
SCHEME IS COMMITTED.

Senator Mazurek introduced the bill at the request of the Attorney General's office and the Blaine County Attorney. He said the concept of the bill arose as a result of a particular case in Blaine County involving two men convicted of breaking into jukeboxes in two different counties, but as a part of a continuing operation. Rather than charge them with one misdemeanor in each of two counties, the Blaine County Attorney charged them with a single felony for both crimes.

In response to a question from Senator O'Hara, Senator Mazurek specified that only if there was a common thread and a definite relationship running through several crimes could the crimes be charged in one county.

CONSIDERATION OF SENATE BILL 407:

SPECIFYING THE DISCIPLINARY AUTHORITY OF
PROFESSIONAL & OCCUPATIONAL LICENSING BOARDS.

Senator S. Brown introduced the bill and presented a handout stating the problem which had suggested this bill (marked Exhibit A and attached to these minutes).

CONSIDERATION OF SENATE BILL 400:

TO CLARIFY THAT UPON PETITION FOR REHEARING
OF A SUPREME COURT DECISION THE ADVERSE
PARTY MAY FILE OBJECTIONS.

Senator Halligan, at the request of the Attorney General's Office, introduced the bill.

John Maynard, Assistant Attorney General, stated that its purpose is to conform the criminal rule with the civil rule relative to the seven-day period in which to request a rehearing following an adverse Supreme Court opinion.

FURTHER CONSIDERATION OF SENATE BILL 335:

ADOPTING A NEW DEFINITION OF MARINE,
INLAND MARINE, & TRANSPORTATION
INSURANCE.

Senator Olson moved that the bill receive a do pass. David Niss pointed out that on page 6, line 3, reference is made to exclusion of certain motor vehicles; and that on page 8, line 7, there is the same exclusion, except it refers to "motor homes" as "auto homes". Since there is no definition of either provided, it is hard to know if the two are supposed to be the same. Also, on page 16, line 8, he pointed out the term "wet marine insurance", a term which is no longer defined in the law. Senator Olson withdrew his motion.

DISPOSAL OF SENATE BILL 336:

Senator Mazurek moved that the bill DO PASS, and his motion carried unanimously.

DISPOSAL OF SENATE BILL 341:

Senator Anderson moved that the bill DO PASS, and the motion carried unanimously.

DISPOSAL OF SENATE BILL 400:

Senator S. Brown moved the bill DO PASS, and his motion carried unanimously.

DISPOSAL OF SENATE BILL 407:

David Niss pointed out that a Statement of Intent would be needed with this bill, and agreed to provide one. Senator S. Brown then moved that the bill, along with the Statement of Intent, DO PASS, and the motion carried unanimously.

DISPOSAL OF SENATE BILL 411:

Senator Berg moved DO PASS, and his motion carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 288:

Senator Anderson stated that Jeanne Anderson, Billings, a member of the Judicial Standards Commission, had wanted to testify in committee relative to her reservations about this bill. Senator S. Brown said that he had talked to her when she was in Helena, and felt that her fears about this bill had been put to rest. Senator Anderson said that he had agreed to hold the bill, along with SB 369, until he hears from Ms. Anderson. Senator S. Brown then stated that he has a real

ROLL CALLJUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/14/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Town, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

Exhibit A

OFFICE OF THE LEGISLATIVE AUDITOR
SUNSET POSITION PAPER #9

RE: RANGE OF PENALTIES GIVEN REGULATORY BOARDS

The Council of State Governments Task Force on State Dental Policies and the Federal Trade Commission (FTC) have each addressed the issue of the range of penalties available for regulating licensees. The two groups stated that in certain instances regulatory boards will not pursue disciplinary action against licensees because the boards believe the alternatives available to them may be too severe for the violation. For example, Montana statutes concerning the Boards of Optometrists and Osteopathic Physicians appear very stringent in penalties for violations of the licensing acts. The statutory language of both laws suggests that the only disciplinary recourse available to the boards is revocation of an individual's license.

In contrast to these specific statutes, a Montana law specifying the duties of regulatory boards attached to the Department of Professional and Occupational Licensing (Section 37-1-103, MCA) describes a somewhat broader range of alternatives.

"Each board shall: 1) set and enforce standards and rules governing . . . the conduct of the members of the particular profession or occupation within its jurisdiction; and sit in judgment in hearings for the suspension, revocation, or denial of a license."

Thus, there appears to be an implied range of disciplinary action up to revocation; however, the range of penalties is not specific.

The FTC and the Council of State Governments stated that a solution to the problem is to allow boards a range of penalties in the law which would fit any disciplinary situation. For example, the Montana Board of Medical Examiners has the statutory authority written into Section 37-3-323, MCA to:

- "(a) revoke his license;
- (b) suspend his right to practice for a period not exceeding 1 year,
- (c) suspend its judgment of revocation on the terms and conditions to be determined by the board;
- (d) place him on probation, or

28

- (e) take any other action in relation to disciplining him as the board in its discretion considers proper."

Similarly, the Board of Radiologic Technologists has the authority (Section 37-14-321, MCA) to do the following:

"A license or permit may be suspended for a fixed period or may be revoked, or such technologist may be censured, reprimanded, or otherwise disciplined as determined by the board...."

In reviewing the appropriate licensing statutes for the boards subject to sunset, it is apparent that most laws specify that the boards have the power to revoke or suspend. A range of available disciplinary actions is usually not provided. A summary of the boards' authority in taking disciplinary actions as set down in the boards' specific licensing statutes appears in Appendix A.

ISSUE:

Should the laws that apply to disciplinary action of regulatory boards specify the range of penalties which are available to the boards?

APPENDIX A

<u>Board Name</u>	<u>Revoke</u>	<u>Suspend</u>	<u>Deny</u>	<u>Probation</u>	<u>Reprimand Censure</u>	<u>Board Discretion</u>
<u>1st Sunset Cycle</u>						
Accountants	X	X	X		X	X
Architects	X					
Banking			X			
Electricians	X	X				
Engineers and Land Surveyors	X	X	X			X
Insurance Commissioner	X	X	X			
Investment Commissioner	X	X	X			X
Landscape Architects	X	X				X
Physical Therapists	X	X	X			X
Plumbers	X	X				
Realty Regulation	X	X				
<u>2nd Sunset Cycle</u>						
Athletics	X		X			
Barbers	X	X				
Chiropractors	X	X		X		X
Cosmetologists	X	X	X			
Dentistry	X	X		X	X	
Hearing Aid Dispensers	X	X	X			
Massage Therapists	X	X	X			
Medical Examiners	X	X		X		X
Morticians	X	X	X			
Nursing	X	X	X			
Nursing Home Administrators	X	X	X			
Optometrists	X					
Osteopathic Physicians	X					
Pharmacists	X					
Podiatry Examiners	X		X			
Psychologists	X	X				
Radiologic Technologists	X	X			X	X
Sanitarians	X	X				

Board NameRevokeSuspendDenyProbationReprimand
CensureBoard
Discretion

Speech Pathologists & Audiologists. . . .

X

X

X

Veterinarians

X

X

X

3rd Sunset Cycle

Aeronautics

X

X

X

Horse Racing.

X

X

X

Livestock

X

X

X

Oil and Gas Commission.

X

Water/Waste Water Operators

X

X

Water Well Contractors.

X

X

STANDING COMMITTEE REPORT

February 14, 1955

MR. PAULIS AT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 407

Respectfully report as follows: That SENATE Bill No. 407

DO PASS

STATEMENT OF INTENT ATTACHED

Mike Anderson

PL
Chairman.

STANDING COMMITTEE REPORT

February 11, 1961

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 407

Respectfully report as follows: That Statement of Intent, SENATE Bill No. 407
be adopted.

STATEMENT OF INTENT RE: SB 407

SB 407 requires a statement of intent because it grants each licensing board allocated to the Department of Professional and Occupation Licensing the authority to adopt specifying grounds for disciplinary action and the type of action that may be taken.

Each board adopting new substantive or procedural rules under SB 407 is to specify both the grounds upon which each type of disciplinary action may be taken, and the procedure to be used for each action. Each board using a disciplinary action not specified in subsection (1)(a)

DEBASS

continued

February 14, 1961

through (e) but considered proper under (1)(f) must also state in the rule the grounds upon which disciplinary action may be taken and the applicable procedure.

No rule shall specify disciplinary action for failure to renew any license or certificate, pay any fee or participate in any program of continuing education unless the renewal, fee or participation is required by statute.

Rules authorized by both SB 407 and by other provisions of law and previously adopted under such other provisions need not be readopted under SB 407.

BA

STATUS SHEET

STATE ADMINISTRATION

COMMITTEE 2/21 #3

47 Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 393	TERMINATE BOARD OF OSTEO-PATHIC PHYSICIANS & TRANSFER REGULATION TO BOARD OF MEDICAL EXAMINERS;	2/20	S. BROWN	3/6/81	BE CONCURRED IN	3/6/81
SB 395	REESTABLISH BOARD OF VETERINARIANS.....	2/23	BROWN	3/6/81	BE CONCURRED IN	3/6/81
SB 406	REESTABLISH BOARD OF COSMETOLOGISTS	2/23	HIMSL	3/6/81	BE CONCURRED IN	3/6/81
SB 407	TO SPECIFY DISCIPLINARY AUTHORITY OF LICENSING BOARDS IN DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL LICENSING.	2/23	BROWN	3/12/81	BE CONCURRED IN	3/12/81
SB 105	REQUIRING THAT ONLY REGISTERED VOTERS OF MT. MAY CIRCULATE INITIATIVE PETITION....	1/7	GALT	3/4/81	BE NOT CONCURRED IN AS AMENDED	3/5/81
SB 325	REVISE SALARY SCHEDULE OF A YOUTH COURT PROBATION OFFICER...	2/24	STEPHENS	3/9/81	BE CONCURRED IN AS AMENDED	3/27

STATE ADMINISTRATION
MARCH 12, 1981
page 3

Senator Story closed the hearing on SB 481.

SENATE BILL 309-SPONSOR, Senator Steve Brown, introduced this bill requested by the Legislative Audit Committee. This bill requires a person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews with a state professional and occupational licensing board to make available to the board and the legislative auditor all records or other information compiled during the review or investigation. He stated that the Audit Committee does not care who performs the audit but they want the information collected available to them and the board. He said that without this bill it becomes a delegation of the association as to whether these reviews are valid. He also said that the long term solution to this problem would be to require that the Department of Professional and Occupational Licensing have one or two investigators on staff.

PROPOSERS

There were no other proposers.

OPPOSERS

There were none.

QUESTIONS BY THE COMMITTEE:

Spilker: Are you going to have problems with the "right to privacy"?

Brown: No, I do not believe we will. We will not release any of the information and we will only require information pertaining to the investigation.

Senator Brown closed the hearing on SB 309.

SENATE BILL 407-SPONSOR, Senator Steve Brown, introduced this bill requested by the Legislative Audit Committee, which grants rulemaking authority to each licensing board allocated to the Department of Professional and Occupational Licensing to adopt rules specifying grounds for disciplinary action and the type of action that may be taken. A board may also file for a court injunction prohibiting a person from practicing a regulated profession or occupation until he is licensed to practice.

STATE ADMINISTRATION
MARCH 12, 1981
page 3

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PROPOSERS

There were no other proposers.

OPPOSERS

There were none.

QUESTIONS BY THE COMMITTEE:

Spilker: Are you going to have problems with the "right to privacy"?

Brown: No, I do not believe we will. We will not release any of the information and we will only require information pertaining to the investigation.

Senator Brown closed the hearing on SB 309.

SENATE BILL 407-SPONSOR, Senator Steve Brown, introduced this bill requested by the Legislative Audit Committee, which grants rulemaking authority to each licensing board allocated to the Department of Professional and Occupational Licensing to adopt rules specifying grounds for disciplinary action and the type of action that may be taken. A board may also file for a court injunction prohibiting a person from practicing a regulated profession or occupation until he is licensed to practice.

SB 407 (cont.)

Senator Brown said that the only course of action under the current law is to go to the county attorney. This does not work because most boards do not want to spend their time involved with legal proceedings. He said that it is much easier to handle the situation in the manner suggested in this bill than to try and amend thirty or thirty-five laws in order to make them uniform.

PROPOSERS

There were no other proposers.

OPPOSERS

There were no opposers.

QUESTIONS BY THE COMMITTEE:

McBride: How will this affect boards that already have this rulemaking authority.

Brown: All of the boards have some powers. This will be an umbrella statute in addition to the powers that the individual boards have.

Senator Brown closed the hearing on SB 407.

SENATE BILL 155-SPONSOR, Representative Keyser, introduced this bill which amends the exclusion provision in the Public Employees' Retirement Act. It excludes from membership in the retirement system workers who are employed for less than 120 days in a fiscal year unless the employee elects to join the system and retirees receiving a retirement allowance who are employed for less than 60 days in a fiscal year. The bill also permits a member to qualify previous service time as a student employed by a Montana college or university at any time during his P.E.R.S. membership.

PROPOSERS

MIKE STEPHEN, Montana Association of Counties, stated that their interest is an economical one. The county must pay into the system the same amount as the employee but they do not get the money back when the employee quits. Also he stated that there is a lot of paperwork involved in entering and releasing short term employees in the system.

EXECUTIVE SESSION (cont.)

Representative Keyser was assigned to carry SB 155 in the House.

SENATE BILL 308

BE CONCURRED IN

Representative Kropp made a motion that SB 308 BE CONCURRED IN. A vote was taken and carried unanimously.

Representative Kropp was assigned to carry SB 308 in the House.

SENATE BILL 309

BE CONCURRED IN

Representative Kropp moved a BE CONCURRED IN on SB 309. Discussion on the motion followed.

A vote was taken and carried with 15 YES, 2 NO, and 2 absent. Representatives Feda and Sales voted no.

Representative Winslow was assigned to carry SB 309 in the House.

SENATE BILL 407

BE CONCURRED IN

Representative McBride said that this would eliminate having several separate pieces of legislation.

Representative Mueller moved that SB 407 BE CONCURRED IN. A vote was taken and carried with 13 YES, 4 NO and 2 absent. Representatives Briggs, Smith, Sales and Feda voted no.

Representative Winslow was assigned to carry SB 407 in the House.

SENATE BILL 481

BE CONCURRED IN
AS AMENDED

Lois Menzies, staff researcher, said that there should be an amendment to the title that would list the amended sections of the bill.